(217)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION No. 5202 OF 2005

PETITIONER

Bed Ram, S/o Roop Singh, Aged about 65 years, (Ex Kotwar), resident of Pouta, Patwari Halka No.6, Tahsil and Thana Malkharoda, District Janjgir-Champa (CG).

Versus

RESPONDENTS

1. The State of Chhattisgarh, Through its Secretary, Department of Revenue, Mantralay, D.K.S. Building, Raipur, Tahsil and District Raipur (CG).
2. The Collector (Revenue Branch), Janjgir Champa, District Janjgir Champa (CG).
3. Additional Collector, Janjgir Champa, Tahsil and District Janjgir Champa (CG).
4. Sub Divisional Officer (R), Sakti, District Janjgir Champa (CG).
5. Naib Tahsildar, Sakti, District Janjgir Champa (CG).
6. Ratan Lal, S/o Kisano, by caste Ghasiya, aged about 36 years, resident of village Pouta, Patwari Halka No.6, Tahsil and Thana Malkharoda, District Janjgir Champa (CG).

WRIT PETITION No. 1028 OF 2004

PETITIONER

Chandrika Singh, S/o Bed Ram Kawar, R/o village Pouta, Tahsil Malkharoda, District Janjgir-Champa (CG).

Versus

RESPONDENTS

1. State of Chhattisgarh, Through Board of Revenue, Bilaspur (CG) Department of Mines & Minerals, D.K.S. Bhawan, Raipur (CG).

2. Sub Divisional Officer, Sakti, Dist. Janjgir Champa (CG).
3. Collector, Dist. Janjgir-Champa, (CG).
4. Naib Tahsildar, Malkharoda, Dist Janjgir Champa (CG).
5. Ratan Lal, S/o Kishno Ghasia, R/o Vill. Pouta, District Janjgir Champa (CG).

Present : Shri N.K. Chatterjee & Smt. Mala Dubey, learned counsel for the petitioners.
Shri Utkarsh Verma, learned Dy. Govt. Advocate for the State.
Shri Parag Kotecha, learned counsel for respondent - Ratan Lal.

ORAL ORDER
(Passed on 5th May, 2006)

Writ Petition No.5202/2005 is filed by Bed Ram, whereas Writ Petition No.1028/2004 is filed by Chandrika Singh, who is the son of petitioner in W.P.No.5202/2005. The case of the petitioner in W.P.No.5202/2005 is that his forefathers were appointed as Jhakhar of village Pouta even prior to 1920 and they continued to hold that post till the year 1945. Bed Ram's father died in the year 1945. Bed Ram was appointed as Jhakhar of village Pouta in the year 1945 after the demise of his father and he continued to hold that post till the year 2000. Bed Ram submitted his resignation to the post of Jhakhar due to his old age and his resignation was accepted by Naib Tehsildar, Sakti, District Janjgir-Champa, the fifth respondent herein on 19-12-2000. Thereafterwards, Chandrika Singh, petitioner in W.P.No.1028/2004, was appointed as village Kotwar on a temporary basis. Thereafterwards, the fifth respondent by his order dated 20-4-2001 appointed Ratan Lal, S/o Kisano, the sixth respondent in W.P.No.5202/2005 as village Kotwar. Chandrika Singh feeling aggrieved by the said order of the fifth

respondent, preferred an appeal to Sub Divisional Officer (Revenue), Sakti, the fourth respondent herein. The fourth respondent by his order dated 15-7-2002 dismissed the said appeal. Chandrika Singh, feeling aggrieved by the order of the fourth respondent dated 15-7-2002, preferred second appeal to Board of Revenue. The Board of Revenue also by its order dated 29-1-2004 dismissed the appeal of Chandrika Singh. Feeling aggrieved by the said order of the Board of Revenue, Chandrika Singh has preferred W.P.No.1028/2004.

2. Bed Ram, after acceptance of his resignation by Naib Tehsildar, Sakti, moved an application before the Sub Divisional Officer (Revenue), Sakti, for grant of Bhoomiswami rights of the subject land on the basis of the order made by this Court dated 3-5-2001 in W.P.No. 2064/2000 and the batch. The Sub Divisional Officer, Sakti, by his order dated 18-10-2004 (Annexure-P13) granted the Bhoomiswami rights of the subject land in favour of Bed Ram. Ratan Lal, feeling aggrieved by the above order of the Sub Divisional Officer, preferred an appeal to the Collector (Revenue), Janjgir-Champa. The Collector vide his order marked as Annexure-P/20 dated 7-9-2005 allowed the appeal and set aside the order of the Sub Divisional Officer, Sakti, dated 18-10-2004 on the ground that Bed Ram could not have been granted Bhoomiswami rights of the subject land on the basis of the above order of this Court dated 3-5-2001, because, well before that day, Bed Ram had tendered his resignation to the post of Kotwar. Bed Ram, feeling aggrieved by the above order of the Collector, has preferred writ petition No.5202/2005.

3. I have heard learned counsel for the parties. The only contention urged on behalf of the petitioner in W.P.No.1028/2004 is that Chandrika

Singh being the son of Bed Ram, he ought to have been appointed as Kotwar of village Pouta in preference to Ratan Lal after resignation of Bed Ram. With regard to the grant of Bhoomiswami rights of the subject land, it was contented that in terms of the order of this Court dated 3-5-2001 passed in W.P.No.2064/2000 and the batch, the Sub Divisional Officer, Sakti, had rightly granted the Bhoomiswami rights and such a grant ought not to have been set aside by the Collector (Revenue), Janjgir-Champa District.

4. Learned Dy. Govt. Advocate for the State Government and its authorities and learned counsel for Ratan Lal, one of the respondents in both the writ petitions, contended that the post of Kotwar is not a hereditary post and therefore, Naib Tehsildar did not commit any irregularity or illegality in appointing Ratan Lal as Kotwar of Pouta village. It was also pointed out by learned counsel for the respondents that after acceptance of resignation of Bed Ram, Chandrika Singh, in fact, was appointed on temporary basis and during his tenure, as per the report of the Gram Panchayat sent to the Naib Tehsildar, Sakti, an uncle of Chandrika Singh clandestinely cut and removed the trees from a Government land and though that fact was known to Chandrika Singh, the same was not reported to Naib Tehsildar, Sakti as required in law and looking from that angle also, non-appointment of Chandrika Singh as Kotwar of Pouta village could not be faulted.

5. Having heard learned counsel for the parties, a short question that arises for decision is whether appointment of Chandrika Singh as Kotwar of Pouta village can be interfered with on any permissible ground and whether Bed Ram is entitled to seek Bhoomiswami rights of the subject

land in terms of the order of this Court dated 3-5-2001 passed in W.P.No.2064/2000 and the batch after he ceased to be Kotwar of village Pouta. I am of the considered opinion that both the writ petitions do not merit acceptance and the petitioners have not made out any ground for interference. The post of Kotwar is not a hereditary post. Nevertheless, after the acceptance of resignation of Bed Ram, Chandrika Singh was appointed on temporary basis, but, during his short tenure, it was noticed that he did not discharge the duties and functions attached to the office in the way expected of him and he did not report the clandestine act of his uncle in cutting and removing the Government trees to Naib Tehsildar and therefore, in terms of law and facts, Naib Tehsildar, Sakti, is justified in appointing Ratan Lal, S/o Kisano as Kotwar of Pouta Village.

6. Coming to the grant of Bhoomiswami rights of the subject land in favour of Bed Ram, at the threshold, it needs to be noticed that Bed Ram tendered his resignation to the post of Kotwar, in the month of December, 2000 and the same was accepted by the Naib Tehsildar, Sakti on 19-12-2000. Therefore, in the first place, the Sub Divisional Officer, Sakti, ought not to have granted Bhoomiswami rights of the subject land in favour of Bed Ram on the basis of the order of this Court dated 3-5-2001 passed in W.P.No.2064/2000 and the batch. Secondly, Bhoomiswami rights of the subject land which are attached to the office of Kotwar, ought not to have been granted in favour of Bed Ram after he ceased to be Kotwar. Therefore, the Collector (Revenue), Janjgir-Champa District is justified in setting aside the order of Sub Divisional Officer (Revenue), Sakti. Both the writ petitions are devoid of merit and consequently both of

them are dismissed. However, in the facts and circumstances of the case, the parties shall bear their respective costs.

7. Before parting with these cases, the interim order made by this Court on 15-12-2005 in W.P.No.5202/2005 requires to be noticed. It appears that Bed Ram, petitioner in W.P.No.5202/2005, on the basis of the order made by the Sub Divisional Officer, Sakti, dated 18-10-2004 had taken over the possession of the subject land and harvested the crops raised therein. This fact is reflected in the report submitted by the Collector, Janjgir-Champa, as stated by this Court in its interim order dated 15-12-2005. In the circumstance, this Court, vide its interim order dated 15-12-2005, permitted Bed Ram to cut the crops standing on the subject land. While doing so, this Court directed the Collector and the Sub Divisional Officer to assess the value of the crops standing on the subject land. Liberty was also reserved to Ratan Lal to seek appropriate compensation, in the event of he succeeding in the writ petition. Since this Court has dismissed the writ petitions and the order is in favour of Ratan Lal, in terms of the interim order of this Court dated 15-12-2005, Ratan Lal is entitled to seek refund of the value of the crops permitted to be cut and removed by Bed Ram, from Bed Ram. As per the assessment made by the Collector and the Sub Divisional Officer, the value of the crops is Rs.1,30,199/- (Rupees One Lakh, Thirty Thousand, One Hundred and Ninety Nine only). Therefore, Bed Ram, the petitioner in W.P.No.5202/2005, is directed to refund a sum of Rs.1,30,199/- to Ratan Lal, S/o Kisano, within a period of one month from today.

Sd/-
Chief Justice
Judge

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